

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ROBERT G. LUSTYIK, JR., and JOHANNES W. THALER,</p> <p>Defendants.</p>	<p>ORDER EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT AND RESCHEDULING TRIAL DATE</p> <p>Case No. 2:12-CR-645-TC</p>
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Based on discussions during the court's March 27, 2014 status conference, the court makes the following factual findings and enters the following order for purposes of speedy trial computation:

1. Defendants informed the court that they would not be prepared to go forward with the trial on September 15, 2014, the day the four-week trial is currently scheduled to begin.
2. The issues and evidence are significant and complicated by the fact that classified government information is potentially evidence that the parties may rely upon during trial.
3. Defense counsel (who is based in Boston, Massachusetts) for Defendant Robert Lustyik (who is in pre-trial custody of the United States Marshal in the District of Utah), related the significant logistical difficulties he has encountered reviewing evidence, particularly

classified material (which has additional levels of restrictions), with his incarcerated client. Given the slow pace at which he is able to go through the voluminous evidence with his client, the trial date as scheduled is unrealistic and will not allow him to be fully prepared for trial.

4. Defense counsel for Defendant Johannes Thaler represented that trial preparation could be streamlined if the Defendants had notice about what evidence (out of the voluminous discovery) the Government will be using at trial.

5. To reduce the delay of preparation, the court ordered the Government to provide a good faith, but non-binding, list of witnesses and exhibits the Government anticipates, at this time, it will be presenting at trial. The Government shall provide that information to the Defendants no later than May 1, 2014.

6. Given the early (non-binding) production the Government has agreed to provide to the Defendants, the time for Defendants to prepare for trial is reduced because the universe of relevant information and potential witnesses will be narrowed.

7. The court, however, recognizes that the efforts described above may not give counsel full time to prepare for trial on September 15, 2014. To add some cushion to the trial preparation time, **the court hereby re-schedules the trial to begin on September 29, 2014.**

8. The ends of justice served by the requested exclusion of time outweigh the best interest of the public and the defendant in a speedy trial.

9. Failure to grant the continuance would deny counsel for the parties the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Based on the court's findings, the time between September 15, 2014, and September 29,

2014, is excluded for purposes of speedy trial calculations under Title 18 United States Code § 3161(h)(7)(A) and (B).

SO ORDERED this 31st day of March, 2014.

BY THE COURT:

A handwritten signature in black ink, reading "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
U.S. District Court Judge